No. 22689

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

DESERT OUTDOOR ADVERTISING, INC., a corporation, SEYMOUR PUXHOM, and CARL PUXHOM,

Appellant,

vs.

COUNTY OF RIVERSIDE, a political subdivision of the State of California, RAYMOND C. SMITH, Building Director of the County of Riverside, C. E. CRABTREE, Land Use Administrator of the County of Riverside, LOSS DONLEY, BYRON MORTON, DISTRICT ATTORNEY of the County of Riverside, Municipal Court, Riverside Judicial District, Municipal Court, Indio Judicial District, the Board of Supervisors of the County of Riverside, WILLIAM E. JONES, PAUL J. ANDERSON, NORMAN J. DAVIS, RAYMOND SEELEY and FLOYD MC CALL as Supervisors of said County, and RIVERSIDE COUNTY PLANNING COMMISSION,

Appellees.

APPELLEES' BRIEF.

RAY T. SULLIVAN, JR.,
County Counsel,
TILDEN L. BROOKS,
Deputy County Counsel,
STEVEN A. BROILES,
Deputy County Counsel,
Court House, Room 206,
Riverside, Calif. 92501,
Attorneys for Appellees.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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APPELLEES' BRIEF.

I.

Statement of Issues.

The only issue involved in the appeal of the order of the trial court in this case is whether the court, acting in equity, abused the wide discretion vested in the court in denying the injunction requested and in staying all further proceedings in the action until final adjudication in the State Court proceedings, now pending, or further order of the court on motion for good cause.

II.
Argument.

In their Opening Brief Appellants have not presented any showing or authority that the trial court, acting in equity, abused its discretion by following the established *doctrine of abstention.* Under the *doctrine of abstention* federal courts, exercising wide discretion, restrain their authority because of scrupulous regard for the rightful independence of State government and for smooth working of the federal judiciary. *Galfas v. City of Atlanta,* 193 F. 2d 931; *Palomar Holding Co. v. County of San Mateo,* 283 F. 2d 390.

The brief further fails to present, identify or offer any considerations which provide an exception to the *doctrine of absention.* The assertion of claims of deprivations of civil rights and of irreparable loss are but unsupported conclusions on the part of plaintiff and affect no abrogation of the rule.

Any rights of plaintiffs to maintain billboards in the County of Riverside must be lawfully established under the ordinance complained of, as the District Court properly held in its order denying an injunction and staying further proceedings. [R. T. p. 73, line 28, to p. 74, line 23.] This ruling is in strict accord with the established federal policy which choose state courts as the preferable forum for adjudication of the question whether local statutes offend the Federal Constitution and statutes. The proper forum for determination of lawfulness under local ordinances is the State Court.

Shipman v. DuPre, 339 U.S. 321, 70 S. Ct. 640, 94 L. Ed. 877; *Galfas v. City of Atlanta, supra.*

The decision of the District Court that the signs must be lawfully in existence under state law is clearly supported in Section 131(d) of Title 23 United States Code which provides:

> "(d) . . . The states shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the state in this regard will be accepted for the purposes of this act. . . ."

The Highway Beautification Act of 1965 (Public Law 89-285; 23 U.S.C. Sec. 100, *et seq.*) does not afford any rights of suit to the plaintiffs in this case. A casual examination of that law reveals that Congress does not therein directly seek to control or regulate zoning in the state or the location and maintenance of billboards. The act is not operative against the states except to the extent it provides for the withholding of a percentage of federal-aid highway funds apportioned to any state after January 1, 1968, which has not enacted provisions for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising within 660 feet of the right of way of such roads. Nowhere in the law is the individual directly granted rights of suit or billboards, however and whenever erected, declared lawful; nor does the law provide or indicate federal jurisdiction to decide such matters. In *Gregg v. Winchester,* 173 F. 2d 512, the Court ruled that, under circumstances such

as in this case where the complaint is practically a duplicate of the one filed in the State Courts, where the issues are the same, the relief asked is the same, the parties and attorneys are the same, that "a sound respect for the independence of state action *requires the federal equity court to stay its hand.*"

Respectfully submitted,

RAY T. SULLIVAN, JR.,
County Counsel,

TILDEN L. BROOKS,
Deputy County Counsel,

STEVEN A. BROILES,
Deputy County Counsel,

By TILDEN L. BROOKS,
Attorneys for Appellees.

Certificate.

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

TILDEN L. BROOKS